

I hereby certify that this paper (along with any paper referred to as being attached or enclosed) is being deposited with the U.S. Postal Service on the date shown below with sufficient postage as First Class Mail, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

Dated: October 26, 2006

Signature

(Raymond Garguilo, Jr.)

Docket No.: SPINE 3.0-437
CIPCIIPCIPCIPCIPCON II
(PATENT)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

re Patent Application of:
Errico et al.

Application No.: 10/784,637

Group Art Unit: 3738

Filed: February 23, 2004

Examiner: B. E.
Pellegrino

For: INSTRUMENTATION FOR PROPERLY
SEATING AN ARTIFICIAL DISC IN
AN INTERVERTEBRAL SPACE

RESPONSE TO RESTRICTION REQUIREMENT

MS Amendment
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This communication is responsive to the Official Action mailed October 12, 2006, setting forth a Restriction Requirement in the above-identified application.

In the Office Action, the Examiner requires election of one of the following distinct inventions under 35 U.S.C. §121:

I. - - Claims 1-8, drawn to a tool for use with a spinal implant;

II. - - Claims 9-12, drawn to a method of positioning a spinal implant having two base plates using a tool with tines that is inserted between the two base plates.

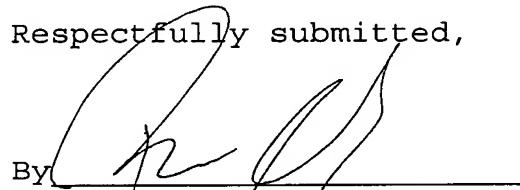
In response to this Restriction Requirement, Applicants hereby elect the invention I, namely claims 1-8, drawn to a tool for use with a spinal implant for prosecution in the present application. Applicants reserve the right to file a divisional application corresponding to the non-elected claims.

In the event any fee is due in connection with the present response, the Examiner is authorized to charge Applicant's Deposit Account No. 12-1095 therefor.

Dated: October 26, 2006

Respectfully submitted,

By


Raymond Garguilo, Jr.
Registration No.: 50,930
LERNER, DAVID, LITTENBERG,
KRUMHOLZ & MENTLIK, LLP
600 South Avenue West
Westfield, New Jersey 07090
(908) 654-5000
Attorney for Applicant